APPEAL NO. 040288
FILED APRIL 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing (CCH) was held on January 16, 2004. With regard to (Docket No. 1), the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on (date of injury for Docket No. 1); that the respondent (carrier) is not relieved of liability for the alleged (date of injury for Docket No. 1) injury because the claimant gave timely notice to the employer pursuant to Section 409.001; and that the claimant did not have disability due to the alleged (date of injury for Docket No. 1), injury. With regard to (Docket No. 2), the hearing officer determined that the claimant's "(date of injury for Docket No. 2), compensable injury" does not extend to include her cervical spine in addition to her left shoulder. With regard to Docket No. (Docket No. 3), the hearing officer determined that the claimant did not sustain a compensable injury on (date of injury for Docket No. 3); that the carrier is relieved of liability for the alleged (date of injury for Docket No. 3), injury because the claimant failed to give timely notice of her alleged injury to the employer pursuant to Section 409.001 and did not have good cause for failing to do so, and that the claimant did not have disability due to the alleged (date of injury for Docket No. 3), injury. The hearing officer's determination regarding Docket No. 2 has not been appealed and has become final pursuant to Section 410.169. Also the hearing officer's determination of timely notice to the employer of the (date of injury for Docket No. 1), injury has not been appealed and has become final.

The claimant appeals the injury and disability determinations regarding the alleged (date of injury for Docket No. 1), and (date of injury for Docket No. 3), injuries on sufficiency of the evidence basis, attaching several documents, some of which were not offered or admitted at the CCH. The carrier responded, objecting "to all new evidence including the type written statement 'On Fact Number Six and Seven'" and otherwise urging affirmance.

DECISION

Affirmed.

Evidence or information submitted for the first time on appeal to the Appeals Panel is generally not considered. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) for the standard which might require a remand. We note that the typed written statements referred to by the carrier appear to merely be elaboration of the claimant's testimony. We will however only consider the testimony at the CCH. Two other documents including an assault complaint affidavit were not offered or admitted at the CCH and do not meet the remand standard of Black, *supra*.

On the merits, most of the evidence and testimony is conflicting. The claimant alleges a compensable injury when she fell out of a swivel chair on (date of injury for

Docket No. 1). The incident was witnessed and the hearing officer, in unappealed determinations, found that the claimant had reported the "alleged (date of injury for Docket No. 1), injury" to her supervisor. Although the incident may have occurred the hearing officer obviously found that the claimant had not sustained an injury as defined in Section 401.011(26). The claimant continued work without any lost time. The claimant also had a lifting incident (which was apparently compensable) on (date of injury for Docket No. 2). The claimant further alleges a compensable injury on (date of injury for Docket No. 3), when she went to the plant manager's office to complete or submit some paper work and was allegedly assaulted by the plant manager, which was denied by the plant manager.

This case rests almost entirely on the credibility of the witnesses. The evidence, including medical evidence, was in conflict and contradictory. While the testimony of the claimant alone may be sufficient to prove a compensable injury, the hearing officer need not accept such testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). The testimony of the claimant, as an interested party, only raises an issue of fact for the hearing officer to resolve. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence, including the testimony of the claimant. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Edward Vilano
Appeals Judge